

U.S. Serial No. 09/335,648

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**REMARKS****A. OVERVIEW**

Claims 1-28 are indicated by the Examiner to be pending in the present application. It is believed that claim 24 has been previously withdrawn from consideration. Therefore this response addresses claims 1-23 and 25-28.

Applicants respectfully submit that claims 1-23, 25-28, as previously written, are allowable for the reasons submitted in prior responses, which are incorporated by reference herein. However, to advance prosecution of the present application, and without prejudice to pursuing the former claims in a related application, this response presents amendments to the claims in an effort to place the application in form for allowance. Reconsideration is respectfully requested.

**B. § 112 REJECTIONS**

Claims 21 and 22 have been rejected as indefinite. The Examiner has raised questions regarding the meaning of certain clauses in those claims.

Claims 21 and 22 have been amended. In particular, they have been amended to clarify any ambiguity by making it clear the "allocation" is an allocation according to some parameter or factor. For example, data is input into the system by a prospective buyer related to number of acres of agricultural crops desired by that buyer. Claims 21 and 22 further specify that data can be allocated according to a parameter. The parameter of Claim 21 relates to how the number of desired acres is allocated or distributed among a number of grain elevators. The data (e.g. total number of desired acres to be produced) can be allocated or divided between a plurality of grain

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elevators so that elevator #1 only can get some fraction of total acres to be produced, elevator #2 only can get some fraction, etc. The system therefore establishes by such allocation an allocation parameter that can be tested each time a user of the system tries to move towards a contract that involves that allocation parameter (e.g. if the parties are involving elevator #1, has elevator #1 been allocated enough acres for the proposal being presently offered?)

The parameter of Claim 22 relates to how the number of desired acres is allocated or distributed among distinct geographic regions. Examples of these type of allocation parameters are set forth at various locations in Applicants' specification, including at pages 12-14. The specification explains how it is beneficial to a buyer. The buyer can, in advance, set up appropriate distribution and storage facilities. This eliminates burdensome telephone calls, letters, visits, and the like to elevators and distributors to set up such arrangements. It reduces the uncertainties of whether certain elevators or distributors will be available. The buyer can set up, in advance, from where and how the crop, for example, will be produced (e.g. which geographic locations). This reduces risk that desired quantities of a crop will be available because of drought, storms, or other catastrophe in one region. Other examples are given in the specification.

It is respectfully submitted these amendments remedy any ambiguity to these claims by making the syntax clearer, that the changes are supported by Applicants' specification, and that the § 112 rejection is overcome.

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**C. § 103 OBVIOUSNESS REJECTIONS**

All pending claims have been rejected as obvious on the basis of Walker U. S. Patent 5,794,207 ("Walker"). The Walker patent has been discussed at length in Applicants' prior responses, which are incorporated by reference herein. It is respectfully submitted that Walker is not legal prior art to Applicants' claimed invention for the reasons previously stated. However, it is respectfully submitted Applicants' claims are not obvious in light of, and are patentable over Walker.

The Office Action acknowledges that Walker does not disclose certain aspects of Applicants' disclosed invention (see Office Action, page 3, first full paragraph). However, the Examiner alleges that such items are not functionally involved in the steps recited in the pending claims.

While Applicants respectfully traverse these rejections, in an effort to advance prosecution of the present application, independent claims 1, 13, 25, 26 have been amended. It is respectfully submitted these amended independent claims recite methods and apparatus which patentably distinguish over the Walker patent.

**1. The Walker Patent**

Before discussing the amendments to the claims, it is believed helpful to briefly discuss the Walker patent relative to the proposed amended claims. As pointed out previously, Walker is focused upon a bi-lateral, buyer driven system which allows a seller or supplier to automatically legally contractually bind a seller. The buyer posts a desired need. It is fixed in type, quantity, and terms. Any number of putative sellers can look at the posted buyer's need and unilaterally

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lock in (legally bind the buyer to a contract) to supply that need without having to negotiate or take other steps.

As also previously pointed out, this Walker system is dealing with fungibles, that is, products like ink pens, envelopes, and other products that are "in being". Walker discloses nothing about agricultural production contracts, which deal with contracting to produce, in the future, things which are not yet "in being".

Walker also spends a lot of description distinguishing its system from conventional conditional purchase orders (CPOs) and requests for quotes (RFQs). In either of those cases, one party basically asks whether another party is willing to sell an amount of an "in being" product from another party. The other party can accept or decline, or negotiate. However, it is again emphasized that Walker's teachings are focused on improving over conventional CPOs and RFQs by allowing sellers to unilaterally legally bind a buyer which has posted a defined need.

In sharp distinction, Applicants' invention differs in at least the following material respects:

- a. Applicants' invention does not even relate to CPOs or RFQs. It does not purport to be a change to or improvement to those types of transactions. And it certainly does not relate to the provision of a method for one party to unilaterally legally bind another. Applicants' claim make this distinction clear. See, e.g., preamble of claims 1, 13, 25, and 26.
- b. While subtle, an important distinction between Walker and the Applicants' invention is that the Applicants' invention relates to methods and apparatus to facilitate the formation of agricultural contracts for the future contracting of agriculture commodities. As discussed in detail in Applicants' specification, such

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a contract for agricultural crops, for example, calls for a grower or third party to commit to produce a given amount or acreage of a crop yet to be grown. There is no product to sell yet "end being". The point is this is a very unique relationship with special concerns and requirements that differ distinctly from selling fungibles. Applicants' claims also make this distinction clear.

- c. Note specifically claims 1, 13, 25, and 26 all relate to a method or apparatus for "formation" of such contracts. The invention is not an improvement on CFOs or RFQs like the cited Walker reference. It is not a way to legally bind another party unilaterally. It is a new way of bringing the variety of typical parties together but also handles relevant information from the various interested parties in a manner that facilitates formation of mutually agreeable contracts. It is a new type of "marketplace" for these relationships. It assists the variety of parties typically involved in such contracts to not only find potential contractual partners, but the system actually facilitates how the relationships are formed, by referring who is eligible for what, and allowing the parties to input, view, and contemplate what relationships are desirable.
- d. The idea of assisting in the "formation" of ag production contracts has several different levels. In part, it refers to helping willing buyers and sellers to "form" final, legally binding contracts. But the claims are more focused on facilitating a centralized system that helps build or structure proposed deals that can then be put into writing and contemplated by the relevant parties. In other words, the invention helps facilitate the bringing together of parties and the "forming" of terms of potential contracts by receiving desires from buyers and sellers regarding

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future production of agricultural products, and presenting proposed terms for consideration of the parties. It "builds" or "forms" contractual terms. But, as importantly, it provides a specific, novel format and rules to handle the different parties' information to try to most effectively help to more quickly, effectively, and efficiently get the needs and desires of the parties satisfied. It takes a very complicated collection of buyers and sellers, each with different needs and desires, and out of that jumble helps move individual buyer-seller pairs towards what are hopefully mutually acceptable terms.

- e. This is particularly important for agricultural production contracts, because it most times relates to buyers that need to make individual contracts with many sellers. This is unlike Walker, where a buyer posts a fixed quantity need, and seeks one seller to satisfy that need. Applicants' invention applies to situations where, for example, a large breakfast cereal manufacturer needs to know it can get one million bushels of a certain type of corn by a certain date. While Applicants' system does not preclude one grower from contracting to try to do so, it more likely must work for many growers who will each supply a fraction of the 1 million bushels. It must also work that the buyer be able to dictate such things as when, where, who, and how, as well as other factors (e.g. delivery times, delivery locations, which growers and what geographic location, which type of corn, etc.). Again, Applicants' claims set forth the distinctions between Applicants' invention and the Walker-type bilateral CFO/RFQ arrangement.

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No system or method was known to the Applicants' at the time of the invention to improve over the conventional thousands of person-hours of work to negotiate separate contracts with individual growers, individual storage elevators, individual distributors. There was no system to improve over the uncertainty and burden of even finding the needed growers, elevators or distributors, in the desired locations and quantities.

The Walker patent would not satisfy or solve these problems or needs. The mere posting of a desired quantity of a fungible, and a seller's ability to unilaterally lock in a contract to provide the same, does not address the needs of agricultural production contract formation.

To more specifically set forth differences in certain aspects of Applicants' invention from Walker, the independent claims have been amended. Specifics are discussed below.

## **2. Amendments to Independent Claims**

Claim 1 has been amended to further clarify specific differences from Walker. Examples are as follows.

### ***a. Agricultural Production Contracts Differ From Walker***

Claim 1 has been amended to specifically call out it is a method for "facilitating the formation of agricultural contracts for the future contracting of agricultural commodities".

Support can be found at least at Applicants' specification page 2, line 24, and page 3, lines 1-7.

Nothing in Walker discloses, teaches, or suggests the same. There is no motivation to adopt Walker to such an environment because Walker is focused on an improvement to CPOs or RFQs for fungibles (not commodities to be produced in the future), and unilateral legal binding by sellers. And, Walker does not want ability to change, adjust, or contemplate, as is the case with Applicants' claimed invention. Walker teaches certainty as to terms and ability to bind a

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single buyer and a single seller. Applicants' invention is a method/system to facilitate bringing multiple buyers, sellers, and third parties together, take in information unique to each, and handle the information in a way to facilitate more effective, efficient formation of contracts for the parties to consider, and hopefully enter. The actual contract terms or the legal binding of the parties are not new. It is the how information from relevant parties is collected and handled to provide a better environment to facilitate movement towards contracts that helps differentiate Applicants' claims from the prior art. Once proposed or "pending" contracts are formed, the relevant parties get to review, contemplate, and decide whether to bind themselves. It takes all relevant parties to agree.

***b. Type of Data Input Into System Differs From Walker***

Claim 1 has been amended to specifically recite that one or more potential agricultural commodity buyers input not only type and quantity of desired future agricultural product, but that also allocation is established "according to at least one allocation parameter". As clearly described in Applicants' specification, including at pages 4-6, 10 and 14, a buyer may want to obtain the crop or agricultural commodity according to different parameters. Examples of those parameters are set forth at those specification pages and, for example, in original dependent claims 9, and 21-23. For example, a buyer may want a given quantity of high oil corn from a variety of geographical regions. This could protect the buyer in case there is a drought or hail damage, or other disaster in one geographic region of the country. It can also assist the buyer in distributing out locations from which supply of crop is taken for transportation purposes or other reasons. Another example is to allocate between elevators. A buyer may want to distribute out its relationship between unrelated elevators for business reasons such as getting competitive



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pricing at storage costs. A still further example is allocating based on seed companies. The growers have to buy seed from seed companies. It may be advantageous, again for business reasons, for the buyer to have relationships with a number of seed companies for competitive reasons. A still further example is allocation based on time or place or method of delivery. These again may be important to the buyer for business reasons.

Walker has no disclosure teaching or suggestion of such a limitation. Again, Walker is focused on a seller being able to look at a posted fixed quantity of "in being" goods desired by a buyer, and being able, virtually with the punch of one computer key, to unilaterally legally bind the buyer to a contract that seller gets to fill that "order". There are no pre-determined "allocations" input by buyer. Walker has no teaching or contemplation of the types of allocation parameters involved with ag production contracts.

*c. How the System Handles the Input Data Differs From Walker*

Claim 1 has been amended to add a limitation that the server makes a comparison of input data from the suppliers or growers. It compares it to current data from the buyer regarding desired quantity and at least one allocation parameter related to a type of agricultural product to be produced. Examples of allocation parameters have been discussed earlier. Support for this limitation can be found at least at page 11-14 of Applicants' specification.

The method of Applicants' claim 1 requires the input data from the supplier to qualify as to type, quantity, and allocation parameter. In other words, once the buyer's allocations are in the system, the system automatically evaluates a grower's willingness to meet the buyer's desire. The system will only qualify growers that meet the quantity and allocation parameter. If they do not meet that parameter, they are not allowed to go forward towards formation of the agricultural

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production contract. In a sense, the system of claim 1 automatically "referees" the varying submissions made from potential suppliers. The system compares the submissions and declares which potential suppliers are qualified to move forward towards the generation of a pending contract.

If a potential producer does not "qualify" based on input data, that producer can go back and enter new input data to see if they can then "qualify" under then current parameters. It is important to note that buyer can change its parameters. It is not necessarily true the same parameters will exist if a potential seller tries again. Moreover, other potential sellers may have changed the quantity available for contracting. The potential seller that did not "qualify" to continue may find others have filled the demand.

Again, Walker has no contemplation of the same. Walker wants everything itemized and ready for just a unilateral acceptance by any seller. There is no comparison or "refereeing" for qualifiers.

Note also that Claim 1 has been amended to state that the system selects the contract program for the given user based on the user's input. This further differentiates from Walker and is supported throughout Applicants' specification. See, e.g., page 15, lines 27-33. This highlights that Applicants' invention is not merely a way to unilaterally bind a party to a CPO or RFQ.

*d. Formation of Pending Contracts Differs From Walker*

Claim 1 has also been amended to make it clear that only if a producer's input data qualifies will a pending contract be generated. A pending contract is then available for buyer and a qualified producer to contemplate. Support is found at least at page 13, lines 20-23.

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There is no ability to unilaterally bind by either buyer or producer, as in Walker.

*e. Dynamic Updating of Available Quantity Differs From Walker*

Furthermore, amended claim 1 specifically describes how available quantity for further contracting is dynamically, in substantially real time, updated whenever a pending contract is converted into a final contract by both parties agreement. In other words, the system automatically not only keeps track of which potential producers are eligible to continue towards contracting, but also automatically can keep track of available quantities for contracting, which will change as contracts are finalized. This is supported at least at Applicants' specification pages 3 and 12. Walker has no disclosure or teaching of this.

It is therefore respectfully submitted that claim 1, as amended, is neither taught, disclosed or suggested by Walker. Walker does not address or deal with the problems and issues addressed by Applicants' amended claim 1. Walker does not give the buyer allocation power over the desired amount. Walker does not have a system that allocates data according to buyer allocation and automatically checks for qualification by suppliers. Walker does not teach a qualification process and then generation of a "pending" contract for contemplation by both parties.

The practical result of claim 1 is that buyers have much flexibility to attempt to achieve their business objectives. They merely do not post a desired need and wait for people to sign up. The system automatically qualifies certain indicated willing growers, not just by amount but by an allocation parameter. The system automatically monitors to make sure there is not an over-commitment on quantity or some mismatch on type or allocation parameter. It ensures a buyer's market strategy is met as the system proceeds towards forming binding agricultural production contracts.

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It is emphasized that claim 1 does not specify a binding contract is automatically created by one party or the other. Remember, these contracts and relationships relate to products not yet "in being". The system referees who are qualifiers and then facilitates a centralized semi-automatic method for moving towards binding agricultural production contracts. It eliminates false starts, it lets the system run in real time, and it eliminates the prior onerous, burdensome, practice of hours and days of phone calls, visits to elevators and seed companies, changes to potential agreements, and negotiations.

In essence, claim 1 describes a methodology that provides an agricultural production contract "marketplace". It allows for variances between buyers to facilitate the needs of all participants in the production and distribution chain.

Not only does Walker not disclose the same, it is not obvious because it is neither taught or suggested. Furthermore, there is no motivation to convert Walker to this system because Walker's whole focus is on the ability of a producer to unilaterally bind a buyer to a posted quantity. Claim 1 goes in a different direction than Walker.

It is respectfully submitted that the evidence of record provides specific distinctions between claim 1 and Walker. It is respectfully submitted that claim 1, as amended, is not obvious over Walker and that Walker does not provide a *prima facie* case of obviousness. Walker, in fact, teaches away from this process.

Independent claims 13, 25, and 26 have been amended similarly to claim 1. It is respectfully submitted that they also are not obvious for the reasons expressed above.

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### **3. Dependent Claims**

Dependent claims 2-12, 14-23, and 27-28 are dependent from the aforementioned independent claims and are believed to obvious for the reasons expressed in support of the independent claims. Additionally, the dependent claims add further limitations which are not taught or disclosed by Walker.

### **4. New Claims**

Still further, new claims 29-37 have been introduced with this response. All are based on disclosure or concepts in original claims in this application. For example, claim 29 relates to the ability to convert a pending contract to a binding contract upon acceptance of both parties. This is supported throughout the specification. Claim 30 talks about the ability to allocate and then change the allocations. Pages 5-6, 10, and 14 describe such concepts. Claim 31 describes the ability to control the state of information through a Web browser. This is based on original claim 24. Claim 32 similarly is based on that original claim 24. Claim 33 is based on original disclosure. Claims 34 and 35 relate to security levels of access which is based on original disclosure in claims. Claim 36 further expands claim 1 into having plural buyers and sellers, which is contemplated throughout the specification. Claim 37 describes the ability to notify different parties to the system, again supported by the specification.

### **D. CONCLUSION**

In conclusion, the Walker reference teaches away from the Applicants' independent claims. It is a system to unilaterally bind a buyer. It is a "take it or leave it" posting situation.

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Applicants' claims are directed to initiating, facilitating and then hopefully forming agricultural production contracts, not post known, existing goods for sale via CPO or RFQ.

Several inventors committed life earnings to the concept of this application before the Walker patent was ever filed, as indicated by the evidence of record. The system is fluid, dynamic, facilitates creation of agricultural production contracts, and all parties can contemplate whether to jump in or not, change or not. There are variables and uncertainty. This is not the attempt for certainty such as the fixed CPO of Walker.

It is respectfully submitted that claims, as amended, are in form for allowance, and all other matters raised in the Office Action have been addressed and remedied. Favorable action is respectfully requested.

Please charge Deposit Account No. 26-0084 the amount of \$291.00 for: (a) the addition of nine new dependent claims (\$81.00) and for a two-month extension of time fee (\$120.00), a request therefore which is respectfully petitioned. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

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If this response is not a result in the allowance of the application, the undersigned respectfully requests the courtesy of a telephone interview with the Examiner to discuss any remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark D. Hansing', is written over a large, stylized, and somewhat abstract scribble or signature.

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